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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re JESSE F., a Person Coming Under the  
Juvenile Court Law.

B148342  
(Los Angeles County  
Super. Ct. No. KJ17670)

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSE F.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. C. Loo Haffner, Temporary Judge. (Pursuant to Cal. Const., art, VI, § 21.) Affirmed.

Jill Lansing, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Linda C. Johnson and Beverly K. Falk, Deputy Attorneys General, for Plaintiff and Respondent.

\* \* \* \* \*

Jesse F., a minor, appeals from an order declaring him a ward of the court pursuant to Welfare and Institutions Code section 602 by reason of his unauthorized use of a vehicle (Veh. Code, § 10851). Appellant contends there was insufficient evidence that (1) the owner of the vehicle did not give him permission to drive it, and (2) he knew he was driving without such permission.

We affirm.

### **FACTS**

We review the evidence in accordance with the usual rules on appeal. (*In re Roderick P.* (1972) 7 Cal.3d 801, 809.) On August 19, 2000, at approximately 1:35 a.m., Simon Murrieta noticed that his light brown Toyota Camry, license No. 3BGR257, was missing. He had not given anyone permission to drive it. He reported the theft to the police later that day.

Shortly after 5:00 p.m. that same day, Deputy Sheriff Jeff Domingo and his partner, Deputy Scott Muravez, observed a gold Toyota Camry, license No. 3BGR257 stopped in the middle of the street, on Marchmont Avenue, in the City of Hacienda Heights, in the County of Los Angeles. There were three individuals in the vehicle, appellant, his brother Michael F. and a friend David F. Appellant was driving. As the deputies approached, the vehicle made “a furtive movement and turned quickly into a driveway and parked half in the street and half out.” The deputies were aware that Toyota Camrys are commonly stolen vehicles. Deputy Muravez believed this conduct seemed strange, so he ran the plates and determined that the vehicle was stolen. The deputies stopped the vehicle and placed appellant under arrest.

Deputy Domingo inspected the car. It had no apparent damage. None of the glass was broken and the ignition and steering column appeared intact. However, the key appeared to be shaved, making it usable as a master key, and it could be inserted only half way into the ignition.

Deputy Domingo interviewed appellant at the scene after reading him his constitutional rights. Appellant told him that at approximately 11:00 a.m. that day, he

was in Azusa and an unknown male approached him and “basically gave him the vehicle.” Appellant told Deputy Domingo that he knew the car was stolen.

Later at the police station, Deputy Trent Denison again interviewed appellant after advising him of his constitutional rights. Deputy Denison testified that appellant told him that he was at a party in Azusa, and a young man named Jonathan loaned him his car so he could drive home to Hacienda Heights. Appellant said he was not sure at the time if the car was stolen, but he believed that it was. He asked Jonathan if it was stolen and was told it was not. Still believing it was stolen, he nonetheless decided to drive it home. Deputy Denison’s report stated that Jonathan gave appellant a Toyota key to the car. It said nothing about a shaved key.

Deputy Denison gave appellant the opportunity to handwrite his statement with the deputy out of the room. In that statement, appellant said nothing about going to a party or to Hacienda Heights. He said: “took the car” from a person named “Jonathan.”

In defense, appellant introduced evidence that he was at home at the time the vehicle was taken. David F. testified that he asked a person named John if he could borrow the subject vehicle. John allowed him to do so because David F. agreed to fill it with gas. David F. then went to pick up appellant. At appellant’s request, David F. allowed him to drive the vehicle, which was stopped by the deputies minutes later.

### **DISCUSSION**

Appellant contends that the evidence was insufficient to sustain the charge of violating Vehicle Code section 10851, subdivision (a). He argues that in order to prove unauthorized use of a vehicle, the prosecution must prove that the appellant was driving without the consent of the owner. The petition under Welfare and Institutions Code section 602 alleged that appellant was driving a vehicle owned by *Barron Murrieta* without his consent. However, Barron Murrieta did not testify at trial. Instead, Simon Murrieta testified that he owned the vehicle and did not give anyone

permission to drive it. Appellant argues that there was no evidence that the alleged owner, Barron Murrieta, consented. This contention is without merit.

Under the substantial evidence standard, the court “must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence -- that is, evidence which is reasonable, credible, and of solid value -- such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Johnson* (1980) 26 Cal.3d 557, 578; *In re Jesse L.* (1990) 221 Cal.App.3d 161, 165.) The appellate court must presume every fact in support of the judgment that the trier of fact could have reasonably deduced from the evidence. (*People v. Rayford* (1994) 9 Cal.4th 1, 23.)

To establish a violation of Vehicle Code section 10851, subdivision (a),<sup>1</sup> the prosecution must establish that the defendant took or drove a vehicle belonging to another person, *without the owner’s consent*, and with the specific intent to permanently or temporarily deprive the owner of title or possession. (*People v. Green* (1995) 34 Cal.App.4th 165, 180; *People v. Windham* (1987) 194 Cal.App.3d 1580, 1590.)

“Of course, it is elementary that every fact or circumstance necessary to constitute the crime charged must be alleged and proved, and the proof must correspond with the allegations in the pleading. But technical or trifling matters of discrepancy will not furnish ground for reversal. Under the generally accepted rule in criminal law a variance is not regarded as material unless it is of such a substantive

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<sup>1</sup> Vehicle Code section 10851, subdivision (a) provides: “Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense and, upon conviction thereof, shall be punished by imprisonment in county jail for not more than one year or in the state prison or by a fine of not more than five thousand dollars (\$5,000), or by both the fine and imprisonment.”

character as to mislead the accused in preparing his defense, or is likely to place him in second jeopardy for the same offense. [Citations.]” (*People v. Williams* (1945) 27 Cal.2d 220, 225-226.) “The test of the materiality of a variance is whether the indictment or information so fully and correctly informs the defendant of the criminal act with which he is charged that, taking into consideration the proof which is introduced against him, he is not misled in making his defense, or placed in danger of being twice put in jeopardy for the same offense.” (*People v. LaMarr* (1942) 20 Cal.2d 705, 711.)

The petition here provided appellant with adequate notice of the charges against him, and the incorrect statement of the vehicle owner’s first name was not material. The petition gave the owner’s correct last name and provided an accurate description of the vehicle, including its license number, information sufficient to allow the defense to independently determine the owner’s name from Department of Motor Vehicle records. There was no indication that the incorrect first name of the owner in any way prejudiced appellant or hampered his defense.

When appellant learned at trial that the first name of the vehicle owner was different than that alleged in the information, he made no objection, thereby waving this contention. (*People v. Fuski* (1920) 49 Cal.App. 4, 8-9.) Furthermore, one could seek a continuance if one were surprised by such a variance. (*People v. Cox* (1968) 259 Cal.App.2d 653, 660-661.) Appellant did not do so.

Appellant contends that the evidence was insufficient to support the guilty verdict in another respect. He argues that the trial court found him not guilty of receiving stolen property because “[t]he evidence did not support beyond a reasonable doubt that the minor Jesse had the requisite knowledge -- i.e. that Jesse knew that the car was stolen or obtained by theft or extortion at the time he received the car.” He claims that this indicated that the trial court rejected Deputy Domingo’s testimony that appellant told him that he knew when he received the car that it was stolen, leaving only two versions of the events: that appellant received the car at a party from

Jonathan who told him it was not stolen or that appellant was at home the night of the party and David F. brought the car to his house without revealing that it was stolen. Appellant argues that in either case there was no evidence appellant knew the car was stolen. We disagree.

To establish the offense of unauthorized use of a vehicle, there is no requirement that the defendant knew that the vehicle was stolen, although such knowledge could be one of various alternative factors evidencing an intent to deprive the owner of title or possession. (*People v. Green, supra*, 34 Cal.App.4th at p. 180.) Thus, the trial court's conclusion that appellant did not know beyond a reasonable doubt that the vehicle was stolen was not inconsistent with a finding that he was guilty of unauthorized driving of the vehicle.

“Where recently stolen property is found in the conscious possession of a defendant who, upon being questioned by the police, gives a false explanation regarding his possession or remains silent under circumstances indicating consciousness of guilt, an inference of guilt is permissible. The [trier of fact] is empowered to determine whether or not the inference should be drawn in light of all of the evidence. [Citation.] Specific intent to deprive the owner of possession of his car may be inferred from all the facts and circumstances of the particular case. Once the unlawful taking of the vehicle has been established, possession of the recently taken vehicle by the defendant with slight corroboration through statements or conduct tending to show guilt is sufficient to sustain a conviction of Vehicle Code section 10851. [Citation.]” (*People v. Clifton* (1985) 171 Cal.App.3d 195, 200.)

Here, when sheriff's deputies approached the stolen vehicle, appellant made “a furtive movement and turned quickly into a driveway and parked half in the street and half out.” He was driving a vehicle which had been stolen earlier that very day. He gave sheriff's deputies at least two different accounts of how the vehicle came into possession. He introduced evidence of still a third explanation for his driving the

vehicle at trial. The evidence was sufficient to support the trial court's finding of the requisite specific intent.

**DISPOSITION**

The order is affirmed.

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\_\_\_\_\_, J.  
DOI TODD

We concur:

\_\_\_\_\_, P.J.  
BOREN

\_\_\_\_\_, J.  
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